



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Human Factors Design and Research

File: B-237997

Date: April 16, 1990

Malcolm J. Brookes, for the protester.
Patricia G. Norry, Nuclear Regulatory Commission, for the agency.
Paula A. Williams, Esq.; Paul Lieberman, Esq.; and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Proposal delivered by Federal Express which was received late at the delivery location designated in the solicitation for hand-carried proposals was properly rejected where the late delivery was caused by the protester's mistaken belief that the proposal should be sent to a location other than that specified in solicitation for delivery of hand-carried proposals, and by the protester's failure to mark the envelope containing its proposal with any identification concerning the solicitation number or deadline.

DECISION

Human Factors Design and Research protests the rejection of its offer as late by the Nuclear Regulatory Commission under request for proposals (RFP) No. RS-RES-90-053, issued to obtain services for a "Human Factors Evaluation of Teletherapy." Human Factors does not dispute the fact that its offer was received late but argues that its offer should be considered because the late receipt was the fault of the agency. We deny the protest.

The solicitation set the time and date for receipt of proposals as 11:00 a.m., local time, Monday, December 4, 1989, at the following address shown in Block 7: "U.S. Nuclear Regulatory Commission, Div. of Contracts & Property Mgmt., P-1042, Washington, DC 20555." The RFP further stated in Block 8 that hand-carried offers, including express mail, were to be delivered to the address shown in Block 9, which was listed as the depository located in Room

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1011, 7920 Norfolk Avenue, Bethesda, Maryland 20814 (the Phillips Building).

On Friday, December 1, Human Factors sent its proposal by Federal Express addressed to the location shown in Block 7, for next day delivery. The mailing envelope did not list the solicitation number or due date and time, nor did it provide any indication that the package contained a proposal. The record shows that Federal Express took the package to NRC's headquarters at 11555 Rockville Pike, Rockville, Maryland (the White Flint Building), and attempted delivery on Saturday, December 2. Since NRC is not open for business on Saturday, and the NRC security force will not accept deliveries outside of normal business hours, the building security guards refused to accept delivery of the package. The package was subsequently delivered by Federal Express to the mailroom in the White Flint Building on Monday, December 4 at 9:08 a.m. The next regular NRC mail delivery to the Phillips Building left the White Flint Building at 10:30 a.m. As a result, Human Factors' proposal arrived at the Phillips Building too late for the 10:00 a.m. regular mail delivery run within the Phillips Building, the last run which could have resulted in timely delivery to the depository room. Human Factors' proposal was delivered to the depository room in the Phillips Building through the regular agency mail delivery service at 1:32 p.m. that day. On December 5, NRC notified the protester that its proposal was rejected as late.

Human Factors argues that the late receipt of its proposal was the result of the misleading proposal delivery instructions contained in the RFP and of its inability to obtain clarification from the contract negotiator prior to dispatching its proposal package. Human Factors asserts that it read the instructions in Block 8 as inapplicable to Federal Express delivery because it believes that "Express Mail" is a "trade mark of the U.S. Government" and does not encompass a commercial mail delivery service such as Federal Express.

The protester further states that since it was using Federal Express delivery services, it tried unsuccessfully to elicit clarification of the delivery instructions from the contract negotiator by telephone prior to sending its proposal. Because it was unable to contact the contract negotiator on November 29 or November 30, the protester relied on its interpretation of the solicitation provisions and sent its proposal to the address shown in Block 7, by Federal Express.

The solicitation reference to express mail in Block 8 merely indicates that express mail is included in the category "hand-carried," and does not otherwise limit the scope of "hand-carried offers," which encompasses offers delivered to an agency by Federal Express or other commercial carrier. See Silvics, Inc., B-225299, Feb. 24, 1987, 87-1 CPD ¶ 204. If such a hand-carried offer arrives late, it can only be considered if it is shown that the sole or paramount reason for the late receipt was some government impropriety. See G.E. American Communications, Inc., B-234853, May 26, 1989, 89-1 CPD ¶ 513; Nanco Labs Inc., B-220663; B-220664, Nov. 27, 1985, 85-2 CPD ¶ 613.

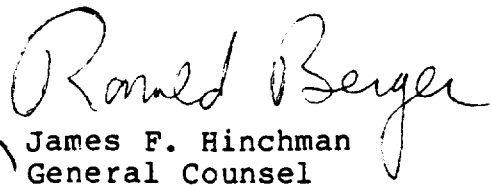
In this case, late delivery of Human Factors' proposal was not due to actions taken by the agency. Rather, the paramount cause for the late delivery was Human Factors' unwarranted belief that the address shown in Block 8 as the address for hand-carried offers was inapplicable for delivery by its agent, Federal Express. While we have recognized that an agency should have provisions for priority handling of bids or proposals which arrive shortly before their due dates, see Nuaire Inc., B-221551, Apr. 2, 1986, 86-1 CPD ¶ 314, in this instance, since the White Flint Building was not the depository location, NRC had no reason to expect delivery of any hand-carried offers, and no basis to implement any extraordinary procedures to identify and expeditiously process any offers received at the White Flint Building. Accordingly, we do not view the security guards' refusal to accept delivery of the proposal on a Saturday as a government impropriety. Moreover, the protester misaddressed the offer and failed to mark the envelope as containing an offer, or to indicate a solicitation number or date and time for receipt of proposals. Under these circumstances, the agency had no obligation to expedite delivery of the package once it arrived at either the White Flint Building or the Phillips Building; thus, the agency's use of normal handling procedures was proper. See Southeastern Enter. Inc., B-237867, Mar. 21, 1990, 90-1 CPD ¶ ____; West Canyon Boiler, Inc., B-232571, Dec. 9, 1988, 88-2 CPD ¶ 578; Nuaire, Inc., B-221551, supra.

Accordingly, since the protester contributed to the delay in delivery, its proposal properly was rejected as late.

The protester also objects that the solicitation is confusing with respect to the number of copies of the proposal which were required. We need not address this

allegation, since any lack of clarity in this regard had no effect on the protester's election of the manner in which to send and address its proposal.

The protest is denied.

for 
James F. Hinchman
General Counsel